



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-5/47435

**PRELIMINARY RECITALS**

Pursuant to a petition filed December 29, 2000, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Brown County Dept. of Human Services in regard to Medical Assistance (MA), a hearing was held on January 25, 2001, at Green Bay, Wisconsin. The record was held open through April 12, 2001, when a telephone conference was held with the parties. Also, an additional submission was received from the county agency on April 12, 2001.

The issue for determination is whether the petitioner's assets may be reallocated to provide for his spouse's income needs and to make him eligible for MA.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Jim Foss, ES Supr.  
Brown County Dept Of Social Services  
Wisconsin Job Center  
325 North Roosevelt Street  
Green Bay, WI 54301

**EXAMINER:**

Peter D. Kafkas  
Administrative Law Judge  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN 399-07-3464, CARES #9110865896) is a resident of Brown County. Petitioner applied for MA with the county agency.

2. As of the application date, the petitioner and his spouse owned non-exempt countable resources totaling \$150,680.99. See, Exhibit 5, page 1.
3. The county agency issued a Notice of Decision informing the petitioner that he had been denied MA on the basis of assets over the asset limit. See, Exhibit 5, page 1.
4. Petitioner had monthly income of \$1,035.11, which included his pension, Social Security, and commissions. His spouse had monthly income of \$315 from Social Security. Exhibit 3. They had \$150,680.99 in assets that were generating \$586.16 in monthly income. See, *id.*

### DISCUSSION

Petitioner requests that the hearing officer reallocate resources under Wis. Stat. § 49.455(8) to provide his community spouse his maximum monthly income allowed by Wis. Stat. § 49.455(4)(a)(2). Wis. Stat. § 49.455(4)(a) states that:

After an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of that institutionalized spouse's income that must be applied monthly to payment for the costs of care in the institution, the department shall deduct the following amounts in the following order from the institutionalized spouse's income:

1. The personal needs allowance under s. 49.45 (7) (a).
2. The community spouse monthly income allowance calculated under par. (b) or the amount of income of the institutionalized spouse that is actually made available to, or for the benefit of, the community spouse, whichever is less.

...

After reviewing Wis. Stat. § 49.455(4)(b) and (c), it can be determined that petitioner may make his total monthly income (undisputed at the amount of \$1,035.11) available to his spouse (whose income is undisputed at \$315) for a total community spouse income of \$1,350.11. This is because petitioner may allocate a sufficient amount to bring his wife's income up to the maximum allocation amount of \$2,175. See, *id.*; see also, MA Handbook, App. 23.6.0 (discussing determination of the maximum allocation).

It is undisputed that the maximum allocation is \$2,175 in this case - including shelter expenses. The administrative law judge will not address shelter expenses based on testimony of the parties made during the telephone conference. The administrative law judge is also not requiring an itemization of shelter expenses based on the testimony. The examiner need not make a determination on the personal needs allowance for petitioner, which would be \$40 or \$90, since it would not affect the computations. See, *id.*, App. 23.6.0 and 10.6.2 (the maximum allocation was \$2,103 (including shelter expenses), prior to January 1, 2001, but the difference does not affect the determination here so the higher figure is used throughout the discussion).

Petitioner's wife is still \$824.89 under the maximum allocation so the question is whether petitioner may allocate **assets** to his wife to bring up her income to the minimum amount.

Under Wis. Stat. § 49.455(6)(b), the community spouse (petitioner's wife), is allowed to keep a community spouse asset share (CSAS) totaling \$50,000 if the couple's asset total is less than \$100,000. However, when assets are above \$100,000, as in petitioner's case, the CSAS is 50% of the assets. See, MA Handbook, App. 23.4.2. The agency therefore set the CSAS as \$75,340.49.

Then when the institutionalized person applies for MA, the total countable assets of the couple are compared to \$2,000 plus the greater of the CSAS, an amount ordered by a court, or an **amount ordered**

**by a fair hearing.** If the assets at the time of application are equal to or less than this amount, the institutionalized person is eligible. If they are more, he is not eligible. *Id.* at 23.3.3.

But again, an examiner can allocate resources to the community spouse at a fair hearing.

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Wis. Stat. 49.455 (8)(d). Simply put, the hearing officer can reallocate resources to generate the maximum allocation. Per the telephone conference testimony of the parties, the couple's total assets of \$150,680.99 only generate interest income of \$586.16 each month.

This examiner concludes that a reallocation must include the petitioner's entire nonexempt assets since even when the examiner allocates the entire balance of the resources to petitioner's wife, her monthly income would still remain below the allowance under sub. (4)(c), which is at \$2,175. A flat 7% annual interest rate on the funds could possibly take the parties over the limit. While the assets could be placed in accounts yielding slightly more income, the administrative law judge finds that the investments are reasonable at this time.

The examiner will set the community spouse resource allocation in this case as \$150,680.99. Petitioner's remaining assets, after transfer, have a value of \$0. She is financially eligible for MA.

**Petitioner must legally transfer all assets into his spouse's name before petitioner's next regularly scheduled review date for eligibility to remain in effect.** *MA Handbook*, App. 23.4.5.

### **CONCLUSIONS OF LAW**

1. The monthly income needs of petitioner's spouse require a reallocation of assets to him.
2. Petitioner's spouse needs \$150,680.99 of assets to generate income to approach her minimum income requirements.
3. Petitioner's assets are below the MA asset limit after the required reallocation.

**NOW, THEREFORE, it is ORDERED**

That the matter be remanded to the county with instructions to certify petitioner as eligible for MA as requested retroactive to September 1, 2000. This shall be done within ten (10) days of the date of this decision. In all other respects, the petition for review is hereby dismissed.

## **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2001.

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Peter D. Kafkas  
Administrative Law Judge  
Division of Hearings and Appeals  
79/PDK

cc: BROWN COUNTY DEPT OF SOCIAL SERVICES  
DHFS - Susan Wood